

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

FIRST STATE ORTHOPAEDICS,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.: U408-02-223
)	
RICHARD W. SALTSMAN)	
)	
Defendant.)	
)	

Dated: August 4, 2010*

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DECISION AFTER TRIAL

Plaintiff, First State Orthopedics (hereinafter “FSO” or “Plaintiff”), filed a claim against Richard W. Saltsman (hereinafter “Saltsman” or “Defendant”) for unpaid reasonable and necessary medical fees for services rendered to Defendant. Saltsman did not deny that Plaintiff was due fees for services but denied that this could be recovered under the complaint filed by Plaintiff.

* After trial on April 26, 2010, Defendant was to submit any supporting data by May 7, 2010. Notwithstanding letters and telephone calls, nothing has been submitted as of August 4, 2010. The Court concludes the matter is now submitted on the record, and is ready for decision.

PERTINENT FACTS

The Court concludes that the record supports these findings of fact. On April 18, 2003, Saltsman was involved in a motor vehicle accident and suffered personal injuries. In particular, the accident exacerbated a preexisting injury to Saltsman's back. Saltsman retained Francis Jones, Esq. (hereinafter "Jones") to file suit against the person responsible for the collision as well as to pursue a personal injury protection¹ (hereinafter "PIP") claim on his behalf.

On January 12, 2004, Saltsman consulted with FSO to determine whether surgery would be necessary to alleviate the pain in his back. Saltsman met with doctors from FSO and decided to proceed with surgery. The parties stipulated that the surgery was successfully performed on Jan 27, 2004 by Dr. Arthur Ruden, a member of FSO.

Kim Hutchinson (hereinafter "Hutchinson"), an account representative employed by FSO testified as follows:

Hutchinson has been employed with FSO for 17 years and is tasked with overseeing patient accounts, maintaining patient files and medical billing. She produced a "Patient Information Sheet"² completed by Saltsman on January 12, 2004, which bears his signature. The document includes Saltsman's name, address, and emergency contact information. It lists Saltsman's health insurance company as "Amerihealth HMO," and his automobile insurance company as "State Farm." The document also contains a "Financial Responsibility Statement/Insurance Assignment" clause which states:

¹ 21 Del. C. § 2118(a); *Selective Ins. Co. v. Lyons*, 681 A.2d 1021, 1024 (Del. 1996) (In Delaware, automobile owners are required by statute to carry minimum liability and personal injury protection ("PIP") insurance, which protects the policy holder and any occupants of his or her vehicle in the event of personal injury automobile accident, including compensation for reasonable and necessary expenses incurred for medical expenses and lost wages).

² Plaintiff's Exhibit # 3.

I accept responsibility to insure that payment is made for all services rendered on my behalf. I understand that my insurance policy is a contract between me and my insurance company and that I am responsible to First State Orthopedics, P.A., for all fee balances determined to be patient responsibility. I acknowledge that it is also my responsibility to obtain a referral from my PCP if required or I will be responsible for payment of FSO fees.

Hutchinson testified that a patient seeking to bill his/her insurance company for a procedure is personally responsible for making arrangements with his/her insurance company to ensure that payments is made.

She produced a “Medical Report and Doctors Lien” signed by Saltsman on March 17, 2004.³ This standardized form requires Saltsman’s attorney to directly compensate FSO for all treatment provided to Saltsman from any funds obtained as a result of any court action involving Saltsman. The relevant portion states:

I fully understand that I am directly and fully responsible to First State Orthopedics for all medical bills submitted by said office for service rendered me and this agreement is made solely for the office’s additional protection and in consideration of awaiting payment. And I further understand that such payment is not contingent of any settlement, judgment, or verdict by which I may eventually recover said fee.

The aforementioned document is utilized in the ordinary course of business whenever FSO is dealing with a patient with a personal injury. This was especially true in PIP matters, so that the patient is made aware that he/she is ultimately required to honor and pay all FSO bills regardless of the outcome of PIP proceedings or insurance coverage determinations. The document also serves to inform patients that FSO will withhold collections while PIP and other insurance matters are pending in Court, but that

³ Plaintiff’s Exhibit # 4.

if the sums remain unpaid at the close of legal proceedings, FSO will begin collections on the case.

Hutchinson detailed Saltsman's treatment, billing, and collections issues as they related to FSO. She is personally familiar with Saltsman's account because of the nature of her work with Dr. Ruden. Her testimony is supported by a document titled "Patient Account Inquiry."⁴ This document was used to record every inquiry by FSO billing staff on Saltsman's account. The document lists a total outstanding balance on the bill of \$17,809.00. The FSO standard billing procedure in PIP matters is to contact the insurance company to determine if PIP coverage is available. In this case, it was available initially. Subsequently, State Farm "denied the PIP." Following the denial by State Farm, FSO contacted Jones, Saltsman's attorney, who informed FSO that Saltsman was pursuing litigation to challenge the denial. While the exact contents of the conversation between FSO and Jones were barred as hearsay, Hutchinson testified that FSO received periodic updates from Jones and his paralegal regarding the status of PIP litigation. FSO held off on collections pending resolution of the PIP litigation in accordance with FSO policy.

On July 15, 2005, FSO received an update that Saltsman's PIP litigation had proceeded to arbitration, but was then incomplete. On September 14, 2006, Jones contacted FSO to inform them that Saltsman had prevailed on the PIP claim, and that FSO would be paid in full in the following month. On December 18, 2006, Jones informed FSO that State Farm had filed an appeal in the PIP matter. On March 19, 2007, Jones contacted FSO again, and informed them that Saltsman prevailed on appeal and that he was awaiting payment from State Farm.

⁴ Plaintiff's Exhibit # 1.

Subsequently, an FSO billing representative called Jones' office on March 22, 2007. The representative was told that Jones had concluded his representation of Saltsman. The FSO representative communicated to Jones that FSO had not been paid and that they were expecting to be compensated. It is not clear from the entry what Jones' response to this allegation was. The representative also left a message with Saltsman.

FSO made further attempts to collect payment. On April 6, 2006 FSO mailed directly to Saltsman an itemized billing statement for the surgery.⁵ The bill was in the amount of \$18,392.00 and stated that "any amount not covered by insurance is [Saltsman's] responsibility." On July 6, 2006, Jones mailed payment in the amount of \$583.00 to FSO.

On cross examination, Hutchinson elaborated why FSO did not attempt to bill Amerihealth, Saltsman's health insurance provider. She explained that PIP claims are generally filed first, and only after PIP claims are denied can FSO attempt to bill a personal injury patient's health insurance provider. Counsel for Saltsman suggested that FSO could have attempted to bill Amerihealth, although he conceded that such a demand may have been unsuccessful. Hutchinson clarified that FSO did not bill Amerihealth prior to resolution of the PIP claim because, in her experience, it *absolutely would not* have been successful.

Saltsman, in support of his position, expressed his belief that the surgery would not have been undertaken absent Amerihealth's approval but no evidence of such approval was presented. He also testified that the reason that FSO was not paid from the

⁵ Plaintiff's Exhibit #2.

PIP litigation proceeds was because he believed that Amerihealth had already paid for the procedure.

On cross-examination, Saltsman readily admitted that FSO provided medical services to him, that there was a charge for these services, and that the outstanding balance owed for these medical services is \$17,809.00. He conceded that he agreed to the “Financial Responsibility Statement” on the “Patient Information Sheet” and that he understood this document to mean he was ultimately responsible to pay FSO the amount owed. He testified that he affirmatively directed Jones to withhold payment from FSO because they had already been paid by Amerihealth. Saltsman denied receiving the April 6, 2006 invoice, but admitted that his address on the invoice was correct.

Counsel for Plaintiff questioned Saltsman regarding various amounts he recovered through his PIP claim as well as the suit filed against the driver responsible for the April 18, 2003 collision. In response, Saltsman admitted that he in fact received numerous payments from Jones, but was unable to recall when and why the payments were received or for what reason. Saltsman testified that he may or may not have received sums in the amount of \$35,000.00, \$15,000.00, \$61,000.00, \$200.00, and \$58,000.00 at various stages of the litigation. He added that his confusion was largely due to the fact that he had no knowledge of the status of litigation, or specifically why any of the aforementioned payments were being made. He acknowledged attending various Court proceedings, but did not know nor remember the status or outcome of any of these proceedings. He claimed his former attorney, Jones, failed to properly communicate with him, and asserted that the various prescribed pain medications he

ingested had a deleterious effect on his memory and comprehension during the course of the PIP litigation.

DISCUSSION AND ANALYSIS

Defendant's position seems to be that since he signed the "Patient Information Sheet" which includes a paragraph titled "Financial Responsibility Statement/Insurance Assignment"⁶ Plaintiff in some manner assumed all responsibility to seek reimbursement from Defendant's insurance carrier. He argued that Plaintiff was in a better position to demand payment from the insurance carrier. Unfortunately, Defendant has submitted no authority to support his position.

The record clearly shows that Defendant assumed responsibility for any charges for medical services. His obligation to Plaintiff was primary and absolute. Because Plaintiff undertook to attempt to collect from the insurance carriers did not absolve Defendant from his obligation to pay for the medical services he received.

There is no suggestion that the services Defendant received were not medically necessary or appropriate. Nor is there any suggestion that the value of the services rendered was inappropriate.

At trial, Plaintiff requested an award of counsel fees and expenses in addition to the claim for medical services. On July 2, 2010, Plaintiff filed a written request for counsel fees and expenses supported by an affidavit detailing the time records on which the request was based. Defendant has not responded to the request nor made any objection to the contents of the request. The "Patient Information Sheet"⁷ signed by

⁶ Plaintiff's Exhibit # 3.

⁷ Plaintiff's Exhibit # 3.

Defendant includes a provision stating that in default of payment due Plaintiff, the Defendant agrees “to pay a cost of collection including attorney fees”.

An analysis of the request for counsel fees and expenses shows it to be fair and appropriate. Since the agreement with Plaintiff obligates Defendant to pay counsel fees, the usual rule that a party to an action bears the costs of his or her attorney fees does not apply and the request for counsel fees can be granted with an award of judgment.⁸

CONCLUSION AND ORDER

Defendant’s obligation to pay for Plaintiff’s professional services is clear. Defendant’s obligation to pay Plaintiff’s counsel fees is a contractual duty assumed in his agreement for professional services.

Judgment is entered in favor of Plaintiff in the amount of \$17, 809.00 with pre-judgment interest from April 6, 2006, with post-judgment interest and costs. Judgment is entered in favor of Plaintiff for allowance of attorney fees and costs in the amount of \$6595.70 with post-judgment interest.

IT IS SO ORDERED

Alfred Fraczkowski
Associate Judge⁹

⁸ *King v. Ron's Mobile Homes Sales, Inc.*, 2009 WL 2243967 at *3 (Del.Com.Pl. 2009) (citing *Knight v. Grinnage*, 1997 WL 633299 at *3 (Del.Ch. 1997)).

⁹ Sitting by appointment pursuant to Del. Const., Art. IV, §38 and 29 Del. C. §5610.